

October 25, 2010

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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
OCTOBER 25, 2010

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
FRANCIS BEDETTI, JR.
JAMES DITTBRENNER (ARRIVING LATE)
RICHARD HAMEL

ALSO PRESENT: ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

NICOLE JULIAN
ZONING BOARD SECRETARY

ABSENT: PAT TORPEY

REGULAR_MEETING

MR. KANE: I'd like to call to order the October 25,
2010 meeting of the New Windsor Zoning Board of
Appeals.

APPROVAL_OF_MINUTES_DATED_9/27/10

MR. KANE: Motion to accept the minutes of September
27, 2010 as written?

MR. BEDETTI: So moved.

MR. HAMEL: Second it.

ROLL CALL

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MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. KANE	AYE

PRELIMINARY_MEETINGS

LOUIS_LUPINACCI_(10-26)

MR. KANE: Tonight's first preliminary meeting is Louis Lupinacci, if I mispronounce your name, I apologize in advance, request for a variance for an existing lot that does not meet minimum lot width of 175 feet. A variance of 27.5 feet is requested at 315 Lake Road in an R-1 zone. Come on up, Mr. Lupinacci. So everybody understands, what the Town of New Windsor does is we hold two meetings, we hold a preliminary meeting so we can get a general idea of what you want to do and you can get a general idea of what we need to make a decision. A lot of towns out there hold one hearing, if you don't come in prepared and you don't have the right stuff, you lose. So that's why we do a two step system and all our decisions have to be done at a public hearing which will be very similar to what happens this evening, except the public will be invited to speak. Please tell us exactly what you want to do.

MR. LUPINACCI: Want me to state my name and address?

MR. KANE: Yes.

MR. LUPINACCI: My name is Louis Lupinacci, L-U-P-I-N-A-C-C-I, I'm at 3 Valley Lane, Upper Saddle River, New Jersey 07458. And I'm here to request a variance of a frontage of 27 1/2 feet. The requirements minimum lot width is 175, I have 147 1/2 feet at 315 Lake Road in an R-1 zone. The lot is pretty level, I had received a variance back in 2006 and it did expire, I was not aware of the one year duration. I'm learning a lot lately.

MR. KANE: Just approved the other lot, did we not?

MR. LUPINACCI: Yes, you did, about two months ago, right.

MR. KANE: This lot is very similar in size and nature to the first lot?

MR. LUPINACCI: It's exactly the same, this is 2.6, the other is 2.4 acres but it's adjacent, the lot in question is this lot, lot 1 the previous one was lot 2 right below here.

MR. KANE: If I remember correctly, building on this lot is there's no water issues or whatever cause everything else slopes behind it?

MR. LUPINACCI: Everything else slopes behind it, there's no issue with water drainage, trees.

MR. KANE: Cutting down trees or substantial vegetation?

MR. LUPINACCI: Not at all.

MR. KANE: Any easements running through the lot?

MR. LUPINACCI: Not at all, sir.

MR. KANE: Right now, the variance is needed, you're intending to sell the lot?

MR. LUPINACCI: Either to sell or to build.

MR. KANE: But there's no building under consideration right now?

MR. LUPINACCI: Not at the moment.

MR. KANE: Do you know what the total size of the property is?

MR. LUPINACCI: This particular one is 114,095 square feet, which is 2.62 acres.

MR. KANE: Further questions?

MR. LUPINACCI: Let me say it again, 114,095 square feet which equals 2.62 acres.

MR. KANE: Got it. Other questions from the board?

MR. BEDETTI: Now potential driveway would be, where would you put the driveway right in the middle of the--

MR. LUPINACCI: The driveway would be right about here.

MR. BEDETTI: Okay.

MR. LUPINACCI: I have other drawings already with a proposed house on it but I wouldn't guarantee that's going to be done according to that drawing.

MR. BEDETTI: So the driveway potentially is just adjacent to the other one lot that you just came for?

MR. LUPINACCI: That's correct.

MR. BEDETTI: I recall the lots so I'm good.

MR. KANE: I'll accept a motion.

MR. BEDETTI: I'll make a motion that we schedule a public hearing for Louis Lupinacci for a request at 315 Lake Road in an R-1 zone for a variance of 27 1/2 feet lot width.

MR. HAMEL: Yes, I'll second it.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. KANE	AYE

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MR. KANE: Okay, we'll set you up for the public hearing, this is what you need to do next, just follow those directions and if you have any questions, give Nicole a call.

MR. LUPINACCI: Thank you.

MR. KANE: You're welcome.

ROBERT_SILVERSTEIN_(10-27)

MR. KANE: Next preliminary meeting Robert Silverstein request to convert an existing single-family house into a two-family house located at 634 Little Britain Road in a PI zone.

MR. SILVERSTEIN: Hi, how is everyone today?

MR. KANE: Good. State your name and address again, speak loud enough for this young lady to hear you.

MR. SILVERSTEIN: Robert Silverstein, 634 Little Britain Road, New Windsor, New York 12553. Okay, a little bit of history on my house and a good start but it was built in 1953 and we didn't have any zoning codes or laws until 1966. I supplied photos which also show the house was actually built for a two family and also it had an antique store there for many years. I'm not in a residential neighborhood, across the street from me is Empire Trucking which have 18 wheelers 24-7, Spiranza Landscaping on the right-hand side of me, behind me is Central Hudson. I have a piece of the town park on my left-hand side. I have planted on my own money my company I own a local business 21 trees and I put clean fill on there every year so that the veterans always had a clean walkway but that's an aside. I bought the family the house as a two-family home in good faith thinking that when my wife has a kid we can either get a nanny or move in the in-laws or rent it out to help us out. That's my intention. When I wasn't home there was a fire in 2004, there's a, this is a few years after I owned the home and at that time, I made sure that the apartment was brought up to specs to fire code separation with the sheetrocking is there. I did call Central Hudson because there's only one meter in the house and I did question them, they said they do not require two meters in the two-family home. I checked in New Windsor Building Department and they don't require two meters in a home. They recommend it

but my house since it's an upstairs-downstairs and there's a long hallway in between one of the doors should be a fire door and Ken Schermerhorn said there's a question on one of the doors if it should be a hollow core door or a fire door which I don't mind changing. I can have an architectural engineer submit a letter saying that it is fireproof sheetrocked, there's proper separation, there's room from the boiler, everything else. I have paid and I don't know if she has this or not, I'd like to submit this, it was listed in the assessor's office up until last Thursday when I questioned to when you look that's a few days ago it was listed as two-family home and if you look back to 2001, I have been paying the taxes on the sewer and the things as a two family, not one family.

(Whereupon, Mr. Dittbrenner entered the room.)

MR. KANE: There's a couple issues that are going to come up that as you can see on this letter that was, may I finish, that wasn't the owner at that time that's listed on this name right here nobody fought this when the town decided that even though the house is grandfathered in when they changed it from a two family to a one family at that point the owner should of come in and they could have proven that it has always been used as two family and then it would have been grandfathered in after this letter it wasn't grandfather in, there's nothing I can do, that's all on the record as is. Point being all of that goes to the wayside because it's in a PI zone where two family homes are not allowed by rule one family you can't build a new one family or a residential home there. Our hands are tied because that takes it from any kind of area variance and makes it a use variance, a use variance by New York State has certain requirements by the state that have to be met before a decision can be made. One of the most difficult ones is that the property you have to prove in dollar and cents that the

property itself can't be sold not at a profit just at what they call a reasonable return which could even mean a loss that it can't be sold to use as it is existing. So that means you would have to prove you can't turn around and sell that as a one family home even if it is at a loss. There's a couple other ones I'll let Andy address that but that's the most difficult one you face, this is state mandated, that's not the Town of New Windsor.

MR. SILVERSTEIN: So I bought my house at \$345,000, it's only assessed now at 200 and something thousand, I'm taking a big loss, I wouldn't be able to sell it.

MR. KANE: You have to come in with all those numbers, show it to the board right here, put everything in dollar and cents, have some professional advice whether it be realtors or whatever come in to substantiate what you're saying and you have to show those numbers on the board. Then it's up to the board to see how they feel about what you're actually showing us when those numbers come up. I'm not saying it's impossible. I'm saying it's difficult. Then there's some other issues that come up with that.

MR. KRIEGER: That's the first of four issues and again the state has mandated these issues, these are not created by this board or by the Town Board.

MR. SILVERSTEIN: I understand that.

MR. KRIEGER: Before I leave that reasonable return understand a profit is by nature reasonable return anything less than a profit that's reasonable return or not that's within the province of the board but they don't necessarily have to see a profit in order to determine that it is reasonable.

MR. SILVERSTEIN: I understand that.

MR. KRIEGER: Okay, you have to prove that the alleged hardship to the property is unique and that it does not apply to a substantial portion of the district or neighborhood. That the requested use variance if granted will not alter the essential character of the neighborhood and that the essential, and the alleged hardship has not been self-created. That being one of the more difficult after the first one which as the chairman correctly points out is generally people find to be the most difficult the one following that is the self-created hardship.

MR. KANE: The self-created I personally I think you've got a little bit of ground to stand on there because there is a history behind it and there is a history of it being used a two family going back to previously to 2002 but right there when the town sent a letter to this, the stated owner right there and nothing was done after that point, that raises a question. What else raises a question is that you have the information that you have been paying as a two-family home since 2002, you want to document all that stuff and bring it all in everything you can use, variances are very difficult so you've got to meet the mark on all four of those things so that's why we hold a preliminary to let you know what you need to do to get this to go through.

MR. KRIEGER: Let me point out to the applicant as far as the taxation is concerned that's an argument, taxation and its legal existence are two separate questions. It doesn't automatically you can't just automatically come in and say well, I've been paying as a two-family house.

MR. SILVERSTEIN: I wasn't saying that.

MR. KANE: Just trying to give you all the information.

MR. KRIEGER: Just trying to establish ground work for you so that, you know, cause others have done that,

it's not automatic, you can't walk in and say well, I've always been paying as a two family, therefore, I'm entitled to it, it isn't that easy, it is relevant information but it's not that easy to determine.

MR. SILVERSTEIN: I understand.

MR. KANE: And with this, our usual thing is to get professional help with this to go through it, whether to talk to a lawyer that knows a lot about use variances, the realtor on a dollar and cents what's going on in these crazy days we have right now and then your historical evidence going back and how the home was actually used, whether it's the letters from past owners, neighbors, that kind of stuff that can prove what you're saying down the line, you throw that in with the taxes, put it in and you have things to think about.

MR. SILVERSTEIN: Would I be able to get a list from Nicole on what you're requiring?

MR. KANE: Absolutely.

MR. SILVERSTEIN: You said there's four things.

MR. KRIEGER: Yes, right there.

MR. KANE: That's the most difficult one under normal circumstances, you throw it out in this day and age it becomes more difficult. We're trying to steer you down the right path to see if it's worth what you want to go through, it's a difficult proposition and we're by no means saying that we're for it or against it here, it's just it's a state mandated one which changes everything.

MR. KRIEGER: Let me point out as far as the single family home is concerned, it's, apparently, I haven't seen that letter but its status as a single-family home

is grandfathered in and secure. The presence of a nanny, a single-family home is defined in the Town Code as up to six unrelated members so if you had a nanny, that wouldn't necessarily--

MR. SILVERSTEIN: See, I got a different Town Code than that.

MR. KRIEGER: If the building inspector's office said that they had a question you would be here, you would appear here again for an interpretation. But that's a much lower hurdle to have to jump than a use variance so you said that certainly a two family would apply to a, it would apply to any rental to strangers holding it out as a two family but in terms of relations, mother-in-law and mothers and that sort of thing, they are related and according to the definition of a single-family home that would be a single-family home. If you, as I say, you would be entitled if the building inspector did not see it the same way you'd be entitled to come before this board for an interpretation which is a much lower hurdle to jump.

MR. KANE: Usually we see a lot of second kitchens, the old summer kitchen in the basement deal and what we hit now is that we actually required them to come through to state that it is not going to be used as a rental property and have access from one area of the home to that bottom area of the home and have it all on one utility bill which you already have.

MR. SILVERSTEIN: Is there another variance I should maybe go for then?

MR. KANE: Because you're in a PI zone because where that property is in that zone, it's not an allowed use at all. And the home is grandfathered in as a residential use so you're there because it predates zoning so it can always be used as that but going for the, you can't change it in any way basically to a

two-family home.

MR. KRIEGER: Look, if you want to because he's grandfathered in as a single-family home, if he wants an interpretation that says it's a single-family home then he should apply for that and that simply wouldn't allow him to use it as a rental unit.

MR. SILVERSTEIN: But if I wanted a nanny to live there even though she's unrelated?

MR. KRIEGER: Unrelated as long as you didn't, as long as there's free access within the house and you weren't operating it as a second apartment. It would be relevant that you were paying the nanny, the nanny wasn't paying you.

MR. SILVERSTEIN: Well, how it's set up just to make it clear I actually took out the oven in 2004, if you look at the pictures and the person lived downstairs had use of ours which means going into our living quarters to use the oven.

MR. KRIEGER: Now, there's only one oven in the premises as it exists now?

MR. SILVERSTEIN: Correct.

MR. KRIEGER: For an interpretation, you'd have to make the usual statement that you realize this is a single-family house, it cannot be marketed as a single-family house, it can't be sold, can't rent part of it out.

MR. KANE: Basically what happens with that is that you're under oath when you make that statement here and if they nail you using it or renting it out later you're in a world of trouble.

MR. KRIEGER: Which might happen by the way if a person

made such a statement and decided to rent the unit and they sought to evict the tenant or say for nonpayment of rent or after a what's called a 30 day notice would supply them with a defense, it's almost unimpeachable, you would seek a judgment for unpaid rent and they'd come in and say we don't owe you any rent because you couldn't legally do that and you would be not only would you lose the eviction action but would you then be subject to prosecution yourself.

MR. SILVERSTEIN: So they can live in the home if they are not related?

MR. KRIEGER: Yes, you can have a certain number of unrelated people in the home.

MR. SILVERSTEIN: See, I was told a little differently, I was told that they have to all be related somehow.

MR. KRIEGER: Well--

MR. SILVERSTEIN: Under nonenforceable laws, there's a slew of nonenforceable laws, just to give you a quick example, these four marines rented a house out in New Windsor but they weren't related and it's not really legal for them to do that.

MR. KRIEGER: To tell you the truth, I've been practicing law for more than 30 years and I have no idea what a nonenforceable law is.

MR. SILVERSTEIN: That's what I was told. I understand what you're saying, he said there's a slew of laws that they have on the books but they're really nonenforceable to go out and enforce them.

MR. KRIEGER: The bottom line is you can come in front of this board for an interpretation and if you wanted to convert the present application to a use variance or an interpretation you could do that, bearing in mind

that would if you decided to proceed for an interpretation it would be easier but you'd lose one of your three projected uses.

MR. SILVERSTEIN: Would that be to my benefit?

MR. KANE: You have to decide that, you have to talk to a professional.

MR. KRIEGER: If you apply for a use variance and it's denied and then you decide that you should apply for an interpretation, it's a separate application, it's a separate appearance. If you combine it, you can do it under the umbrella of the present application and present appearances.

MR. SILVERSTEIN: I don't have to pay another 700 bucks?

MR. KRIEGER: And wait however long the agendas require that you wait.

MR. SILVERSTEIN: So the use variance that you're talking about now, what would that actually permit me?

MR. KRIEGER: That would if it were granted that would permit you everything that you have asked for that would permit you to treat it as a rental unit.

MR. KANE: A use variance, the other's an area variance or interpretation rather has nothing to do with the use.

MR. KRIEGER: The use variance if it were granted would give you everything that you want. However, all the chairman has indicated the state has made it granting such variances to be a difficult proposition at the time of the zoning law was, the state zoning law was amended, there was a significant body of opinion in the halls of Albany that use variances should not be

allowed at all and this was the compromise solution but compromise has made it very difficult for a person to get a use variance, not impossible but very difficult.

MR. SILVERSTEIN: So a use variance.

MR. KRIEGER: You can apply for an interpretation and/or use variance so you might perceive the interpretation might be favorable and a use variance might be unfavorable, that's okay, you can do that, you can do two at once.

MR. SILVERSTEIN: Since I'm not legally smart here, I'm missing the fine edge, again, the two--

MR. DITTBRENNER: Here's the bottom line, without the legalese in layman's terms, you're either going to go forward with strictly a use variance which you applied for which has those four hurdles imposed that are incredibly difficult to satisfy and it's really kind of out of this board's discretionary hands to render anything outside of you satisfying those or you can modify the application to include an interpretation and use variance and as the chairman said, you may or may not see a decision favorably on the use side but on the interpretation which is an easier hurdle to get over. We may approve it. At the end of the day, it's all about what you really want to do with the property, if your intentions are to just have a nanny and mother-in-law, mother, elderly whatever reside with you, then this removes the gray area of having, using it as a second family rental. If your intentions are eventually to market it as really a two family where you're going to have a rental unit.

MR. SILVERSTEIN: That would be a use variance, okay, so the interpretation that will allow me to do what I want to do with it then.

MR. DITTBRENNER: To do what you're currently doing and

what you said you want.

MR. KANE: Except rent it out.

MR. SILVERSTEIN: Except take money for it.

MR. KANE: There you go.

MR. SILVERSTEIN: I got it. What are the requirements for an interpretation, is that different?

MR. KANE: Those four do not come up.

MR. BEDETTI: Just your intended use.

MR. KANE: You're going to tell use your intended use, we're going to ask you some questions about how the power comes into the house, gas and electric, we like that on a single meter, that you have no intention of renting the place out, your intention is to use it as a single-family home from now and forever and that actually passes on if you ever sell the house it's the same deal. So those said, you would come in and tell us how you want to use it and then we make a decision based on what you tell us.

MR. KRIEGER: And the decision if it were favorable to you would say that the board has interpreted it as taking all the information that has been supplied and testified to and believes it's a single-family house.

MR. SILVERSTEIN: That's exactly what it is now though.

MR. KRIEGER: Exactly.

MR. KANE: Once you put the two kitchens, it automatically comes in front of us. Basically, they go in and they'll say there's a second kitchen, you need an interpretation on how you're using this cause they'll automatically think you're renting it, that's

the way they think now, that's what they put up front so they put that in your hands, we think it's a rental, you come in and you get an interpretation and we'll either agree or disagree, we've gone both ways depending on what the evidence shows.

MR. SILVERSTEIN: Now I understand.

MR. DITTBRENNER: And if you decide to modify for an interpretation, you may want to bring some pictures showing there's one electrical service or one meter, that there's access from the main part of the dwelling into the secondary area, those types of things to his understanding that yeah, it really is a single family.

MR. KANE: Believe we, we've seen a lot.

MR. KRIEGER: Regardless of whether or not you include an interpretation the board will also want pictures of the neighborhood.

MR. SILVERSTEIN: Sure, that's no problem at all, of the building you mean?

MR. KANE: Yeah, just general pictures of the area.

MR. BEDETTI: Relative to the use variance, you actually have to satisfy all four items, not just one or you have to satisfy all four of them and that's what makes it difficult.

MR. SILVERSTEIN: So what would my next step be, modifying it to an interpretation, going to Nicole's office and modify it?

MR. KANE: Yes, you can bring that in and add that in if you decide to or depends on how fast you want to go, you may want to sit down and talk to somebody professionally and see what your options are, if it's worth going through hiring a lawyer, the realtor and

putting the money out to get all that stuff done. Come in and get a use variance, possibly gets turned down and then what we would do is segway right over to the interpretation, if you put both of them in or you may decide, my intent is to not really rent it-rent it but to have other family in there or the nanny in there so I'm not going to go to the use variance cause my odds on that are kind of rough, I'm going to go for the interpretation and then you're just bound by law what you can and can't do.

MR. SILVERSTEIN: Got you, I didn't realize your hands were so tied when it's a PI zone.

MR. KANE: Well, any zone that there's not a right of use in that particular zone then it becomes a use variance when you want to change that and there's no residential allowed in a PI zone unless it was something that was grandfathered in.

MR. SILVERSTEIN: Got you, okay.

MR. KANE: It's one of those beautiful New Windsor neighborhoods, we have a little bit of everything.

MR. SILVERSTEIN: I understand, I've been here for many, many years, I love the town. Okay, so my next step is to show up in her office tomorrow?

MR. KANE: This will give you some general ideas but give Nicole a call tomorrow.

MR. SILVERSTEIN: And I can modify the existing one now?

MR. KANE: I would make a motion to set up a public hearing on the requested use variance.

MR. KRIEGER: Set up a public hearing on an interpretation if that's what he wants to do so he

doesn't have to come back for another preliminary.

MR. KANE: I would phrase it set up a public--

MR. DITTBRENNER: Mr. Chairman, I would submit a motion that we move the application of Robert Silverstein forward for a public hearing as it relates to a request to convert an existing single-family house into a two-family house and the potential modification to include an interpretation for the property used as a single-family home with two kitchens located at 634 Little Britain Road.

MR. BEDETTI: Second it.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. DITTBRENNER	AYE
MR. KANE	AYE

PETER_PETRILLO_(10-29)

MR. KANE: Next preliminary hearing is Peter Petrillo request for a variance to replace front porch which is 7 x 10 feet. Required front yard depth is 45 ft. A variance of 7.5 feet is requested at 231 Margo Street.

MR. PETRILLO: Peter Petrillo, 231 Margo Street, New Windsor. Do you have copies of pictures?

MR. KANE: We do, we do. So tell us again exactly what you want to do so it goes on the record.

MR. PETRILLO: Well, what I have is a collapsing front porch and I just wanted to put an extension onto it. The current porch is very small, as you can see one I came off of the top brick last winter and ended up with surgery on a rotator cuff. It was built in '53, you can see that the blocks in front have no support, there's a steel beam, a steel I-beam underneath. There's no footing so I've got to put a footing anyway and I just want it to come out just about 7 feet. Now if you look at the one picture shows--

MR. KANE: This is I think the one we need to talk about. On this one when you bring that porch out, is it going to extend further than this home that's out here? Will it extend based on that do you see how that's the front of the home right there when you put the porch on is it going to extend passed that or about even?

MR. PETRILLO: No, it will be even. This picture shows all the houses in line, the blocks show where the porch is.

MR. KANE: So your intent on this porch will keep that line the same?

MR. PETRILLO: Yes, those houses are 37 feet from the

line, this picture is the property line, I'm standing on the property line and this bush right here has the pole in it from here to the front of my house is 45 feet, from here to the road is 13 and from here to the center of the road is 17 more. This house was the first one built, it was built before the road was put in and it's the only one that has a 45 foot setback.

MR. KANE: Replacing, obviously, there's a safety hazard with this, your front door comes out to it so you need a substantial porch?

MR. PETRILLO: Yes.

MR. KANE: The porch you're proposing to build you're not going to be creating water hazards or runoffs?

MR. PETRILLO: No.

MR. KANE: Removing the trees or substantial vegetation?

MR. PETRILLO: No.

MR. KANE: Any easements running through the area where you intend to build the porch?

MR. PETRILLO: No.

MR. KANE: Further questions from the board?

MR. DITTBRENNER: Just on page 3 of 3, this photo here are these blocks that you have laid out approximately where the porch is going to come out to?

MR. PETRILLO: Yes, this represents where the stairway will be and if you look at, see the box is still there in front that's where the porch, this is just a hole but this is where the blocks would come to. Here's the line, this is taken in line with all the houses down

the road.

MR. DITTBRENNER: You don't plan to come out any further than this mulch bed?

MR. PETRILLO: No, and this is, this is taken from the post and in this bush is where the post is. From this line here to my the front of my house is 45 feet exactly and it's 37 to there. There's 13 feet from the line to the end of the grass and another 17 from the center of the road.

MR. KANE: Any further questions? If not, I'll accept a motion.

MR. DITTBRENNER: I would move that we forward the application of Peter Petrillo for a requested variance to replace a front porch requiring a 7.5 foot variance at 231 Margo Street in an R-4 zone.

MR. BEDETTI: I'll second that.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. DITTBRENNER	AYE
MR. KANE	AYE

MR. KANE: This is what you do next.

PUBLIC HEARINGS:

JEFFREY_SCHITZLER_SR._ (10-24)

MR. KANE: First public hearing is Jeffrey Schitzler, Sr. request for a variance for an existing shed that does not meet minimum 10 foot side or rear yard setback. A variance for the side yard is 4 feet and for the rear yard is 6 feet at 101 Holly Drive in an R-4 zone. I'd ask if there's anybody in the audience for this particular hearing? Okay, Jeffrey, tell us what you want to do same as the preliminary, very similar.

MR. SCHITZLER: My name is Jeff Schitzler, 101 Holly Drive, New Windsor. Looking for the variance of I believe it was an additional 6 feet on the rear, 4 feet on one side to meet the minimum requirements of a 10 foot minimum for the location of the storage unit that my father had placed.

MR. KANE: Approximately, how long has the storage unit been there, approximately?

MR. SCHITZLER: I'm going to say somewhere in the '60s.

MR. KANE: Do you remember or know of any cutting of substantial vegetation or trees in the building of this shed?

MR. SCHITZLER: Not that I can remember.

MR. KANE: Create water hazards or runoffs, any runoff or water problems around the shed?

MR. SCHITZLER: Not at its present location.

MR. KANE: Any easements running through where the shed is on your property?

MR. SCHITZLER: Water, sewer is all coming in off the main road.

MR. KANE: No easements running through on your property, right-of-ways?

MR. SCHITZLER: No, no, all the driveways go out to the main roads.

MR. KANE: Have there been any complaints formally or informally about the shed to your knowledge overall over the years?

MR. SCHITZLER: None whatsoever.

MR. KANE: Further questions from the board at this time?

MR. DITTBRENNER: This shed sitting on any type of a footing or slab?

MR. SCHITZLER: No, just cinderblock which naturally sits right on the ground itself.

MR. DITTBRENNER: Any reason why it can't be moved to conform with the code requirements?

MR. SCHITZLER: If it's moved forward due to the nature of the terrain, it would create a water situation on the back side of it which would then create water erosion or deterioration on the building itself without extensive drainage or piping or anything of that nature water would be leaching off from the rear of it at that point.

MR. KANE: You have a little bit of a slope in front of the shed?

MR. SCHITZLER: Yes.

MR. KANE: The shed similar in size and nature to other sheds in the neighborhood?

MR. SCHITZLER: As far as what I can see, yes, and in similarity they're all virtually being that it's a small, the lots are small, 75 x 110 everything that I can see within the neighborhood over the course of time appears that everybody else is virtually doing or has done the same thing which is virtually sitting very close to the corners, rear, side or whatever.

MR. DITTBRENNER: How big is the shed?

MR. SCHITZLER: Seven foot 6 by I'm gonna say 15, 16 feet in length.

MR. KANE: I will open it up to the public for anybody that wishes to speak, please come up, state your name and address loud enough for this young lady to hear you and ask whatever questions you have.

MR. FRY: My name is Richard Fry and my wife is Patricia Carey, we live at 102 Chestnut Drive in Lacey Field. My wife's family has lived in the same house since it's been built for 60 years ago, so we have a longstanding interest in the neighborhood. I regret to single out a particular instance of a variance but having lived in the community for a long time and seeing a general ignoring of some of the existing codes we're concerned that the character the residential character of the neighborhood is slipping. In fact, parts of it are becoming more commercial which is not your concern at all. The fact that other residents have non-conforming structures on the property seems to me to indicate that there's a problem rather than a solution emerging from granting these variances. I don't envy anybody having to move a shed at all but it seems to me that that's a self-imposed hardship and it's been well understood for many years and I think it, there are actually covenants in the deeds in the

Lacey Field developments that have spelled out the setbacks. So this is hardly a new regulation or a neighborhood tradition to prohibit sheds that are closer than 10 feet to the property line. Again, I hate to single out a particular instance and I think those of us who want to preserve the character of Lacey Field would be happy to high to move it in doing whatever is necessary because those of us who live there a long time want to preserve the value of the neighborhood and the property values but in general we would have to say we object to variances of this sort.

MR. KANE: Okay, and you realize the shed has been there 40 years?

MR. FRY: Yes, I do, yeah, I definitely do.

MR. KANE: Had you ever made any complaints to the people on that property about the shed?

MR. FRY: No, and in fact, as far as I'm concerned, that section of Lacey Field frankly has been better preserved than I think our end of it unfortunately but I do feel some responsibility to make an objection to the variance.

MR. DITTBRENNER: Can I ask a question? You mentioned deed restrictions. Can you reference specifically a deed restriction that is related to outbuildings like that, like a shed that is pre-existing?

MR. FRY: Trying to avoid saying no. One of the residents in our neighborhood showed us a covenant that was attached to their deed, some of it clearly unenforceable, for example, prohibiting non-caucasians from living in the neighborhood. So this is old, and there's a great deal to object to it, but I think in that covenant is some language about structures to be, yes, structures constructed on the property and I think having a setback I don't have that covenant with me

though but it does exist and it goes right back to the founding of Lacey Field.

MR. DITTBRENNER: Thank you.

MR. FRY: There's the covenant.

MR. DITTBRENNER: I understand if there was a deed restriction that predates our zoning requirements then it does, cause you need to think about is it self-imposed, self-inflicted, non-conformance something that existed before our code. That's the only reason I asked and I understand your point that it is irrelevant in your determination.

MR. KRIEGER: Plus the fact in order to consider that you would have to consider whether there was such a restrictive covenant in his deed, in his, in the applicant's chain of title, it's immaterial whether it's in some neighbor's chain of title.

MR. DITTBRENNER: Right.

MR. BEDETTI: Have you been able to determine whether the restriction is in that?

MR. FRY: No, there are more serious issues going on so no, no, absolutely not and I as I say I regret it's because of some other commercial activities in the area and some adverse possession of town land actually for use for parking that we started looking into this and you just unfortunately happened to be on the public hearing so I have come to create a nuisance of myself in your case.

MR. SCHITZLER: As a point of interest for myself, I was born in '49, was raised up in the house, lived here all my life, just as a point of interest who in the neighborhood or let's say a bylaw so to speak when Lacey Field was developed back in the '40s who has that

within the development or where could I find that how it relates to the neighborhood?

MR. FRY: That's a big issue and it's one I think you're probably interested, I'm interested, other residents are interested in there because there are some serious commercial encroachments into the neighborhood and a general decline in particular in our end with the people, four or five cars and one tenant has commercial space on one side and he has run out of parking places so he now has his tenants from 9W park on Chestnut Drive on the grass on town land and has put gravel down on the town land in order to enable this commercial parking so that's really my concern, it's your particular thing a variance is, I mean, I've seen the property, it's a very attractive neighborhood so I have to stand on the principle, I don't want to see anymore commercial and non-conforming use in Lacey Field and that's the only reason that I object to yours and that's why I'm researching the subject.

MR. DITTBRENNER: From the front of your property line to where the shed is, is it 75 feet or more?

MR. SCHITZLER: No, it's not, well, I'm sorry, it's 100 and front would be 75 feet, yes, it would exceed 75 feet.

MR. DITTBRENNER: Okay, I'll have you read item 4 at the end cause even if it is in his deed it allows for outbuildings, garages as long as they exceed 75 feet from the front line they don't need to comply with the 10 foot requirement.

MR. FRY: Yeah, thanks.

MR. KANE: Any further questions, sir?

MR. FRY: No, thank you very much.

MR. KANE: Thank you. Anybody else in the audience for this particular hearing? Seeing as there's not, we'll close the public portion of the hearing and ask Nicole how many mailings we had.

MS. JULIAN: On the 12th day of October, 2010, I mailed out 66 addressed envelopes with no written response.

MR. KANE: And back to the board for any further questions? I'll accept a motion then.

MR. BEDETTI: I will make a motion that we grant the request for a variance for the existing shed that does not meet 10 foot side yard setback and a variance for a side yard setback of 4 feet and 6 foot variance for the rear at 101 Holly Drive in an R-4 zone.

MR. DITTBRENNER: Second that.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. DITTBRENNER	AYE
MR. KANE	AYE

DUNKIN_DONUTS_(10-25)

MR. KANE: Next is Dunkin Donuts variances are requested for a proposed pole sign which will exceed maximum permitted height of 15' and will exceed maximum of 64 square feet. Two proposed wall signs which all exceed maximum permitted height, width and number of permitted wall signs and an interpretation for a freestanding menu board at 1053 Little Britain Road in an NC zone. Please state your name and address and speak loud enough for this young lady to hear you.

MR. NAFASH: Michael Nafash, 82 Alise Drive, Kinnebone, New Jersey 07405.

MR. KANE: Same as the preliminary.

MR. KRIEGER: Property's owned by a corporation?

MR. NAFASH: Yes, an LLC that I own.

MR. KRIEGER: You're an officer of the corporation?

MR. NAFASH: Yes.

MR. KRIEGER: You're authorized to represent the corporation?

MR. NAFASH: Yes.

MR. KRIEGER: Tell the board what you want to do.

MR. NAFASH: What we want to do is put a pylon sign on one side of the property and then we reduced the number of building signs that were on the original site plan down to the two, one on one side where the drive-thru is so it's visible from people coming from I guess the Newburgh area and one on the front of the building and the signage is a little bit bigger than I believe what the ordinance called for. What we did do since our

last meeting is I went back and I had the sign company re-engineer the pylon sign because that seemed to be the biggest.

MR. KANE: The freestanding?

MR. NAFASH: Yes, so I was able to engineer that down to the 15 foot and less than the 60 some odd feet so I don't need--

MR. KANE: So we're going to take the permitted height and we're going to take the 64 square feet out of the equation?

MR. NAFASH: Yes.

MR. BEDETTI: This is for the freestanding sign.

MR. NAFASH: I believe you raised some issues on that last time.

MR. KANE: I did on the height.

MR. NAFASH: We took some pictures and we could, we'd be okay with that just looking for now just the little small square footage increase of the size of the signs on the building.

MR. KANE: So we're just down to the two wall signs, the one in the front?

MR. NAFASH: And the one on the side proportionately they need to be a little bit bigger plus you need to see them from the road. The way you pull in you don't want people jamming on the brakes to come into the location, definitely don't want any premature hitting of the brakes, it's a tough turn in and tough turn out so proportionately that's why they're designed that size.

MR. KANE: No, we appreciate you making that move on that particular sign. Are the wall signs illuminated?

MR. NAFASH: Yes.

MR. KANE: Flashing or steady illumination?

MR. NAFASH: No, steady.

MR. KRIEGER: Internal?

MR. NAFASH: Yes, internally illuminated, yes. You had asked one other question to find out which was exactly how far back from the street was the pylon sign which was a good question, really didn't dawn on me but happened at another project they wanted to make sure if the sign falls it doesn't fall into the road and it's only 15 feet the setback from the curb is 24 feet so even if the wind blew it down.

MR. KANE: It's going to be approximately right where you have it in this picture?

MR. NAFASH: Yes, set back 24 feet, measured it myself.

MR. KANE: At this point, I'm going to open it up to the public and ask if there's anybody here for this particular hearing? Seeing as there's not, we'll close the public portion of the hearing and bring it back to Nicole, ask how many mailings we had.

MS. JULIAN: On the 12th day of October, 2010, I mailed out 15 addressed envelopes with no written response.

MR. KANE: The two extra signs that are going on the wall signs in the front and on the side same size signs?

MR. NAFASH: I believe they are.

MR. KANE: As indicated on this page?

MR. NAFASH: Yes.

MR. KANE: So both signs are the same size?

MR. NAFASH: Yeah, they are identical signs.

MR. KANE: Further questions from the board on the two wall signs?

MR. DITTBRENNER: So there's a total of 36?

MR. KANE: Just going with two.

MR. NAFASH: Menu boards in the back can't even see it.

MR. BEDETTI: And it's not attached to the building?

MR. NAFASH: No, no.

MR. KANE: We're going to get that one next, just trying to knock each one out at a time.

MR. BEDETTI: You don't have a rendering of where the menu board is actually behind the building, is that correct?

MR. NAFASH: Correct.

MR. BEDETTI: And it's not visible from the road?

MR. NAFASH: No.

MR. BEDETTI: There was just no rendering how and where it's positioned relative to the building itself but--

MR. DITTBRENNER: What's directly behind the property where that sign is?

MR. NAFASH: My property extends and then there's like wetlands.

MR. DITTBRENNER: So there's no residential?

MR. NAFASH: No, the residential is on the one side and what we did is we put about a 4 foot high fence, building inspector wanted us to do that to prevent any of the headlights hitting the houses way behind, what's behind me is 200 feet of wetlands, a retention basin, stuff like that, no one can see the menu board.

MR. DITTBRENNER: Just for clarification, I missed the last meeting, there's no variance required for the freestanding sign?

MR. KANE: At all and for the two wall signs we're going for four inch height variance, a three inch width variance and one additional wall sign cause he's permitted one so that's--

MR. DITTBRENNER: Sign and size.

MR. KANE: Four inches and three inches for both signs.

MR. DITTBRENNER: And the menu board?

MR. KANE: An interpretation on the menu board. Any further questions guys? If not, I'll accept a motion.

MR. BEDETTI: I'll make a motion that we grant a variance for one additional wall sign which exceeds the permitted height and width at 1053 Little Britain Road in an NC zone for Dunkin Donuts.

MR. DITTBRENNER: I'll second it.

ROLL CALL

MR. BEDETTI AYE

MR. HAMEL AYE
MR. DITTBRENNER AYE
MR. KANE AYE

MR. KANE: And an interpretation on a menu board.

MR. BEDETTI: I don't have any other additional
questions so you're asking for questions or a motion?

MR. KANE: No, asking for a motion.

MR. BEDETTI: Well, I'll make a motion that we grant
the applicant Dunkin Donuts' request for an
interpretation at 1053 Little Britain Road for a menu
board that's basically used as an item doing business
and is not a sign that requires a variance or
conformance to the sign requirements in our code so
that this is in fact a menu board separate from the
sign code.

MR. KANE: Included as an electronic ordering device.

MR. BEDETTI: It's a device for performing business.

MR. HAMEL: I'll second it.

ROLL CALL

MR. BEDETTI AYE
MR. HAMEL AYE
MR. DITTBRENNER AYE
MR. KANE AYE

MR. NAFASH: In the first motion he said one additional
sign, he didn't say anything about the other sign
saying non-conforming in his motion.

MR. KANE: You're allowed, the motion included the one
additional sign, you're allowed it and we made the
variance for a four inch height and a three inch width

for both signs.

MR. NAFASH: Perfect, just want to make sure.

MR. KANE: Absolutely.

MR. BEDETTI: I just want to make a comment that I thought the building was done in good taste, that the signage was done in reasonably good taste.

MR. NAFASH: Wait till you see the inside.

MR. KANE: Thank you.

MR. NAFASH: If you thought the outer was in good taste--

MR. KANE: Thank you for redesigning the pole sign.

MR. NAFASH: I saw it was an issue, we gotta do what we gotta do.

DOUGLAS_&_DIANE_BROWN_(10-23)

MR. KANE: Douglas and Diane Brown request for a variance for a fence which is proposed 6 foot in height and a variance of 2 foot in height is requested at 29 Clarkview Road in an R-4 zone. Good evening, same thing, name, address.

MR. BROWN: Douglas and Diane Brown, 29 Clarkview Road, New Windsor. And we're proposing to have this fence which was already up as we explained the first time we came, we switched over to vinyl, we did some yard work at that time the fence had to be disassembled. Now that we're going to get it reassembled, I'm being a cautious homeowner making sure that everything is going to be in line if we ever decide to sell or whatever the case might be it's the proper thing to do and so I guess we submitted two other pictures that you had asked for for a view from the cul-de-sac not obstructing any view in our opinion. But it's kind of in your hands. There was some questions about the setback from the road which again is a little vague at this point I'm not exactly sure, I don't know if it's going to be in writing or not, there's been some contact with the Highway Department, it was really not brought to the attention in writing to us what exactly that setback was.

MS. JULIAN: They said that there are no water or sewer lines, they're in the middle of the road, they're not on their property.

MR. BEDETTI: I guess the question that came up is the fence only on your property or on town property?

MS. JULIAN: It's on their property, they don't need--

MR. KANE: They don't need any kind of right-of-way?

MS. JULIAN: Right, and they have enough room for the

snow.

MR. KANE: Cutting down any trees, substantial vegetation in the building of the fence?

MR. BROWN: No.

MR. KANE: Create water hazards or runoff?

MR. BROWN: No.

MR. KANE: Any easements going through where the fence is located?

MR. BROWN: No.

MR. KANE: And the additional two feet on the fence more for security reasons?

MR. BROWN: And privacy, yes.

MR. KANE: Open it to questions, any other questions from the board?

MR. BEDETTI: Seems to be enough clear view, there's no, the fence does not obstruct anybody driving a car through there to see it's coming up?

MR. BROWN: Which I can understand if it was the intersection, yes.

MR. BEDETTI: So there's no obstruction?

MR. BROWN: Yes, well, the pictures are pretty clear we're on a cul-de-sac so--

MR. KANE: At this point, I will open it up to the public, ask if there's anybody here for this particular hearing? Seeing as there's not, we'll ask Nicole how many mailings.

MS. JULIAN: On the 13th day of October, 2010, I mailed out 59 addressed envelopes with no written response.

MR. KANE: We'll bring it back to the board for any further questions. No further questions, I'll accept a motion.

MR. DITTBRENNER: I move we approve the application of Douglas and Diane Brown as relates to a variance requested for a fence proposed six foot high requires a two foot variance at 29 Clarkview Road in an R-4 zone.

MR. BEDETTI: I'll second it.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. DITTBRENNER	AYE
MR. KANE	AYE

FORMAL_DECISIONS

1. JALE DOKUZLAR
2. ROBERT DETRICK

MR. KANE: Gentlemen, we have two formal decisions tonight.

MR. DITTBRENNER: I would move we approve the formal decisions of Jale Dokuzlar and Robert Detrick as submitted with one vote.

MR. BEDETTI: I'll second that.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. DITTBRENNER	AYE
MR. KANE	AYE

MR. KANE: Motion to adjourn?

MR. DITTBRENNER: So moved.

MR. BEDETTI: Second it.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. DITTBRENNER	AYE

October 25, 2010

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MR. KANE

AYE

Respectfully Submitted By:

Frances Roth
Stenographer

